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WASHINGTON, D. C. 20505

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76-5567

Office of Legislative Counsel

9 NOV 1976
9 NOV 1976
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File Legal
9 NOV 1976

Mr. William N. Nichols
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

I am in receipt of your letter to the Director of 2 November 1976 asking that we provide your office additional information in explanation of our opposition to the proposed draft Executive order, "Suitability Requirements for Government Employment," which your office had forwarded to us and to which Director Bush responded in his letter of 19 October 1976 to Honorable James T. Lynn.

We appreciate your statements in support of our position that our efforts should be directed toward developing suitability and security requirements that are in consonance with the needs and responsibilities of all Executive departments and agencies, including the Intelligence Community. In this light, we will contact your office to provide you with additional material identifying and explaining in greater detail the problems we perceive in the proposed Executive order.

We will be pleased to assist in redrafting the order.

Sincerely,

SIGNED

Acting Legislative Counsel

STATINTL

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

Executive Registry

76-10079/9

DD/A 76-5514

GENERAL COUNSEL

November 2, 1976

Honorable George Bush
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Bush:

This replies to your letter to the Director of October 19, 1976, in response to my letter to you of August 6, 1976, requesting your comments on a proposed Executive order entitled "Suitability Requirements for Government Employment."

Your letter expressed the view that the Intelligence Community should be excluded from the provisions of the proposed order, "if the terms of this draft order are implemented in their present form." The letter closed with the following statement:

"It is my view that the longer term interests of the Government would best be served if every effort is made to develop suitability and security requirements that are uniform and acceptable to all agencies and departments, including the Intelligence Community. I stand ready to assist in such an effort."

We concur in your view and again request your assistance. A large number of other agencies have expressed concerns about the draft order and have suggested significant improvements. Based upon their comments, we have concluded that the order must be redrafted.

You indicated that the CIA has put substantial effort into a review of the strengths and weaknesses of the proposed order, and that your efforts to accommodate the requirements of the Intelligence Community to the terms of the order surfaced many substantial difficulties. As we begin the process of redrafting, it would be most helpful to have copies of the analytical work you have already done as well as any additional substantive comments you may wish to submit.

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DDA:JFB/der (9 November 1976)

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I trust this letter is responsive to the concerns you raised.

Sincerely,

(Signed) William M. Nichols

William M. Nichols
General Counsel

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Executive Registry

76-10078/4

DD/A Registry

File *Legal*

19 OCT 1976

Honorable James T. Lynn, Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to the letter of 6 August 1976, from your General Counsel, requesting my comments on the proposed Executive Order entitled "Suitability Requirements for Government Employment." A careful review of the draft Order has led me to conclude that its standards and procedures do not afford adequate protection to the Government's sensitive foreign intelligence information or activities.

In light of my statutory and executive responsibilities to protect intelligence sources and methods and analytical procedures, it is of deep concern to me that only those persons of the highest degree of loyalty and trustworthiness be granted access to foreign intelligence data requiring protection. The minimum personnel security standards and procedures governing access to Sensitive Compartmented Information are contained in Director of Central Intelligence Directive No. 1/14, which was issued pursuant to Executive Order 11905, Section 102 of the National Security Act of 1947, and National Security Council Directives. DCID No. 1/14 applies to all Government personnel and private individuals requiring access to such information.

The proposed Order strikes at the heart of the process of protecting sensitive Government information and by its broad terms clearly encompasses standards and procedures of crucial importance to the Intelligence Community. The investigative procedures and the standards whereby, under this draft Executive Order, an individual would be granted clearances for access to sensitive information including intelligence sources and methods, fall far short of those which I deem necessary in light of my statutory and executive responsibilities. Furthermore, I am concerned that the provisions of the proposed Order related to purported rights of employees or applicants could be construed to conflict with my termination authority under Section 102(c)




of the National Security Act of 1947, as amended. This authority vested in the Director of Central Intelligence reflects the necessity that he retain flexibility and discretion in protecting sensitive intelligence information and those positions involving access thereto.

In view of the basic differences between the proposed Order and the responsibilities of the Director of Central Intelligence, therefore, I have concluded that the limited exemption provided the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, in Section 3(b) of the draft Order, must be expanded in order to remove from the terms thereof the Director of Central Intelligence and the Intelligence Community. Section 4 of the draft Order also must be amended to make clear that neither the Director of Central Intelligence nor any of the organizations of the Intelligence Community, are required to accept or certify security clearances granted by other Government agencies or departments pursuant to this Order. I am enclosing with this letter amendatory language to accomplish these purposes.

I fully recognize that amending this Order as noted above would result in two standards for granting security clearances in the Government. This burden, however, involving as it would some degree of duplication and added expense, in my view is absolutely necessary if the terms of this draft Order are implemented in their present form.

My decision in this matter was made only after concerted effort to accommodate the requirements of the Central Intelligence Agency and the Intelligence Community to the terms of this draft Order. The many and substantial differences, however, dictate that this would not be possible absent a redrafting of the Order to reflect fully the interests of all agencies and departments affected; representatives of the CIA and the Intelligence Community Staff were not consulted in the earlier drafting deliberations. It is my view that the longer term interests of the Government would best be served if every effort is made to develop suitability and security requirements that are uniform and acceptable to all agencies and departments, including the Intelligence Community. I stand ready to assist in such an effort.

Sincerely,


George Bush
Director

Enclosure

Distribution:

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OLC:RLB:ndl (30 Sept 1976)

ENCLOSURE

PROPOSED AMENDMENTS TO THE DRAFT EXECUTIVE ORDER,
"SUITABILITY REQUIREMENTS FOR GOVERNMENT SERVICE,"
SUBMITTED BY THE DIRECTOR OF CENTRAL INTELLIGENCE

1. Amend Section 3(b) by substituting the following for the last sentence thereof: "This Order shall not apply to the Director of Central Intelligence or the organizations constituting the Intelligence Community as defined by Executive Order 11905."
2. Amend Section 4 by adding the following sentence at the end thereof: "Nothing in this Order shall require that the Director of Central Intelligence or any of the organizations exempt from this Order by Section 3(b) accept or certify security clearances granted pursuant to this Order."

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